

MEMORANDUM

TO: Ronnie Roberts, Beaver River Commissioner
FROM: Kerry Carpenter, Ass't Regional Engineer
DATE: 24 April 1992
RE: Delivery of 10 cfs right to UP&L on South Fork of
Beaver River

The 10 cfs right referenced is listed as Award 1(b) in the 1931 Beaver River Decree. The right indicated ~~is~~ as a year-around diversion right with a priority date of 16 May 1907. The Kent's Lake Reservoir Co. right on the South Fork of the Beaver River is listed in the Decree as Award 2(a) with a priority date of 1890 and a right to divert for storage during the period of April 1 through June 30. I cannot find anything in the Decree which addresses the possible conflict of these two rights or the amount of flow that can be diverted for storage by the Reservoir Co.

On 11 June 1941, Rocky Ford Irrigation Co. and the Telluride Power Co. brought a suit against the Kents Lake Reservoir Co. and the State Engineer regarding the applications filed by Kents Lake to create the Three Creeks dam, move some of their existing storage rights into Three Creeks, and appropriate some additional Beaver River water for Three Creeks. This action resulted in an "Amended Decree" signed 8 November 1943 by Judge Will L. Hoyt which states, in part:

"[The Kents Lake] storage right is limited to the period extending from April 1st to June 30th of each year and provided that such right to store water may be exercised when and only when the flow of Beaver River at the government gauging station at the mouth of Beaver Canyon is in excess of a flow of 164 cubic feet per second and the Kents Lake Reservoir Company is entitled to divert and store at the point above specified all water on the South Fork of Beaver River in excess of sufficient to maintain the flow of Beaver River at the government gauging station at the mouth of Beaver Canyon at a quantity of 164 cubic feet per second [emphasis added]."

Therefore, it appears that as long as the flow at the mouth of the canyon exceeds 164 cfs, Kents Lake can divert^{ava} store from the South Fork the entire flow up to the amount over 164 cfs and until their storage right is filled or their storage period ends.

It would appear that during many years, the flow may be sufficient that both the Kents Lake storage requirement and the UP&L right could be satisfied without conflict, but if we stay strictly with priority dates and the language of the 1943 Hoyt Amended Decree, Kents Lake is entitled to divert the entire flow of the South Fork if they insist upon doing so. I am sending a copy of this Memo to Lee Sim and requesting hereby that he advise me as soon as possible if I am misinterpreting these rights in any way.